

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JULAINÉ SOLOMON,

Plaintiff,

v.

SOCIAL SECURITY,

Defendant.

CASE NO. C11-5114RBL

ORDER

THIS MATTER comes on before the above-entitled court upon Plaintiff's Amended Complaint [Dkt. #4]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

On February 7, 2011 plaintiff filed an Application to Proceed *In Forma Pauperis* and a proposed Complaint. The Complaint named as defendants "Social Security and the County." The Application was deficient because it lacked a signed written consent for payment of costs and the Complaint was deficient because it did not conform to the requirements of Fed. R. Civ. P. 8(a). Consequently, on February 8, 2011, this Court entered an Order directing the plaintiff to cure the deficiencies noted above within 14 days or face dismissal. On February 22, 2011,

1 plaintiff filed the required signed written consent for payment of costs and an Amended  
2 Complaint.

3 A complaint filed by any person proceeding *in forma pauperis* pursuant to 28 U.S.C. §  
4 1915(a) is subject to a mandatory and *sua sponte* review and dismissal by the Court to the extent  
5 the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or  
6 seeks relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B);  
7 *Calhoun v. Stahl*, 254 F.3d 845 (9<sup>th</sup> Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B)  
8 are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9<sup>th</sup> Cir. 2000) (en banc).  
9 Section 1915(e)(2) mandates that the court reviewing a complaint filed pursuant to the *in forma*  
10 *pauperis* provisions of Section 1915 make and rule on its own motion to dismiss before directing  
11 that the complaint be served pursuant to Fed. R. Civ. P. 4(c)(2). *Lopez*, 203 F.3d at 1127  
12 (“[S]ection 1915(e) not only permits but requires a district court to dismiss an *in forma pauperis*  
13 complaint that fails to state a claim”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9<sup>th</sup>  
14 Cir. 1998) (nothing that “the language of § 1915(e)(2)(B)(ii) parallels the language of Federal  
15 Rule of Civil Procedure 12(b)(6).”).

16 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*  
17 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9<sup>th</sup> Cir. 1984).  
18 The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably  
19 meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at  
20 327. A complaint or portion thereof, will be dismissed for failure to state a claim upon which  
21 relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right to relief  
22 above the speculative level, on the assumption that all the allegations in the complaint are true.”  
23 *See Bell Atlantic, Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007) (citations omitted). In other  
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1 words, failure to present enough facts to state a claim for relief that is plausible on the face of the  
2 complaint will subject that complaint to dismissal. *Id* at 1974.

3 The court must construe the pleading in the light most favorable to plaintiff and resolve  
4 all doubts in plaintiff's favor. However, conclusory allegations of the law, unsupported  
5 conclusions, and unwarranted inferences need not be accepted as true. *Jenkins v. McKeithen*,  
6 395 U.S. 411, 421 (1969). Neither can the court supply an essential fact a plaintiff has failed to  
7 plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266,  
8 268 (9<sup>th</sup> Cir. 1982)). "Under Ninth Circuit case law, district courts are only required to grant  
9 leave to amend if a complaint can possibly be saved. Courts are not required to grant leave to  
10 amend if a complaint lacks merit entirely." *Lopez v. Henderson*, 203 F.3d 1122, 1129 (9<sup>th</sup> Cir.  
11 2000). *See also*, *Henderson v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106  
12 (9<sup>th</sup> Cir. 2004), citing *Doe v. United States*, 58 F.3d 494, 497 (9<sup>th</sup> Cir. 1995) ("a district court  
13 should grant leave to amend even if no request to amend the pleading was made, unless it  
14 determines that the pleading could not be cured by the allegations of other facts.")

15 As currently plead, Plaintiff's Amended Complaint is subject to *sua sponte* dismissal  
16 under 28 U.S.C. § 1915(e)(2)(B)(ii) because it fails to state a claim upon which relief may be  
17 granted. Plaintiff's Amended Complaint is incomprehensible. She apparently is complaining of  
18 mistreatment by unidentified individuals at some unidentified time at the Social Security Office,  
19 possibly in Tacoma. She also appears to be complaining about action of an unidentified police  
20 department that occurred nine years ago.

21 In this Court's February 8, 2011 Order, directing the plaintiff to file an Amended  
22 Complaint she was informed of the requirements of a Complaint under Fed. R. Civ. P. 8(a), and  
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1 was warned that the failure to do so would result in the dismissal of her Complaint. Specifically,  
2 she was directed to file an Amended Complaint which includes:

3 (1) the basis for this Court's jurisdiction;

4 (2) a factual statement explaining who did what to whom and when such actions  
5 occurred; and

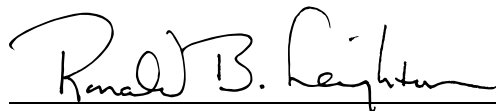
6 (3) the relief she is seeking.

7 Plaintiff's Amended Complaint fails to set forth the basis of this Court's jurisdiction, fails to  
8 explain who did what to whom and when, and fails to set forth the relief she is seeking. As such,  
9 the Amended Complaint fails to state a claim upon which relief may be granted. Because  
10 plaintiff was once given leave to amend and the Amended Complaint failed to cure the  
11 deficiencies in the original Complaint, this case shall be **DISMISSED**.

12 **IT IS SO ORDERED.**

13 The Clerk shall send uncertified copies of this order to all counsel of record, and to any  
14 party appearing pro se.

15 Dated this 14<sup>th</sup> day of March, 2011.

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18 RONALD B. LEIGHTON  
19 UNITED STATES DISTRICT JUDGE  
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